

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 18/1/2021**
Judgement delivered on 17/2/2021**WA No. 476 of 2020**

(Arising out of order dated 27.10.2020 passed by learned Single Judge in WPC No.2534/2020)

- Shri Jain Shwetamber Murtipujak Sangh Durg, through its President Rajesh Jain S/o Shri Uttam Jain, aged about 52 years, R/o House No.7, Malviya Nagar, Durg, District Durg (CG)

---- Appellant**Versus**

1. State of Chhattisgarh, through the Registrar of Firms and Societies Chhattisgarh, Mantralaya, Indravati Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. Collector, Durg, District Durg Chhattisgarh.
3. Sub Divisional Officer Durg, District Durg (CG)
4. Inspector Cum Invigilator, Firms & Societies, State of Chhattisgarh, Office of Registrar, Firms & Societies Chhattisgarh Block No.1, 3rd Floor, Indrawati Bhawan New Raipur District Raipur (CG)
5. Nodal Officer, Covid-19, Office of Collector, Collectorate Durg District Durg (CG)
6. Uttam Bardiya, S/o Late Shri Mehgraj Bardiya, R/o House No. 5/9, Rishabh Nagar, Durg, District Durg (CG)
7. Kishor Kochar, S/o Shri Umedmal Kochar, R/o M.I.G.482, Padmanabhpur, Durg, District Durg (CG)
8. Dinesh Kumar Maroti, S/o Late Shri Rupkaran Maroti, R/o Behind SBI Bank, Near Surrana Building, Ganj Para Durg, District Durg Chhattisgarh.
9. Smt. Neeta Jain, D/o Shri Sujjanmal Jain, R/o House No.7, In Front of Mahaveer Bhawan, Mahaveer Colony, District Durg.

---- Respondents

For Appellant	:	Mr. Ishan Verma, Advocate
For Respondent No.1 to 5	:	Mr. Siddharth Dubey, Deputy Government Advocate
For Respondent No.8	:	Mr. Prateek Sharma, Advocate

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

CAV Order

Per Parth Prateem Sahu, J

1. Correctness of the order dated 27.10.2020 passed by the learned Single Judge directing the Registrar, Firms & Societies, Raipur to appoint an 'Election Officer' for conducting election of the appellant-society after calling meeting of General Body of appellant society in accordance with the bye-laws, is put to challenge in this writ appeal.
2. Facts relevant for disposal of this appeal are that appellant is a society registered under the Chhattisgarh Societies Registrikaran Adhiniyam, 1973 (henceforth 'the Adhiniyam of 1973'). As per bye-laws of appellant-society, term of election of the members of the Managing Committee is of three years. Earlier election took place in the year 2017 for a period of three years i.e. 2017-18, 2018-19 & 2019-20. Election became due in the year 2019-20 for which meeting of the Working Committee was convened on 2.3.2020 in which decision has been taken to hold election of the society. Accordingly, election was notified to be held on 29.3.2020 for which notice was issued on 12.9.2020. One Shri Mohan Lal Sethiya was appointed as 'Election Officer' with the consent of all the members of society. After declaration of election programme, nationwide lock-down was declared on account of pandemic 'Covid-19' due to which scheduled election could not be held. Period of lock-down was extended from time to

time and thereafter in the month of May, 2020 when some relaxation has been declared by the Central Government and the State Government, the Election Officer made an application to the Sub-Divisional Officer, Durg seeking permission to conduct election of the society, but looking to the norms and protocol of lock-down, the said request/application was turned down. Appellant society thereafter filed writ petition before the High Court bearing WPC No.2097/2020 praying that respondent Nos.5 to 7 therein be restrained from conducting election and the Registrar, Firms & Societies, Raipur be directed to ensure that election of society is conducted as per bye-laws by the Election Officer appointed by the Working Committee i.e. Shri Mohan Lal Sethiya. During the pendency of said writ petition, the Collector, Durg issued letter dated 17.9.2020 to the Sub-Divisional Officer for making arrangements for holding elections, pursuant to which the Sub-Divisional Officer issued letter dated 18.9.2020 appointing one Naib Tahsildar-cum-Executive Magistrate for holding elections as per bye-laws on 4.10.2010. Prior to the elections of the society on scheduled date, the Assistant Registrar, Firms & Societies, Durg intimated the Collector, Durg that as per Rule 10 (A) of the registered bye-laws of the society, there is requirement of giving 15 days advance notice for holding elections, hence it is not possible for holding elections on 4.10.2020. Based on the said letter of the Assistant Registrar, the Additional Collector, Durg vide letter dated 03.10.2020 had postponed the elections for 22.10.2020

& 23.10.2020 and nominated Shri Pramod Kujur, Inspector, Firms & Societies, Raipur as 'Election Officer' with a direction to inform all the members of the society about elections 15 days in advance. This made the petitioner/ appellant to approach the High Court by filing writ petition with following reliefs:-

“10.1. This Hon'ble Court may kindly be pleased to call the entire records of the Election Process of the 2020-21 of the Sangh.

10.2. This Hon'ble Court may kindly be pleased to declare passing of order dated 3.10.2020 by the Additional Collector, Durg and any act done in pursuance of the same to be illegal and without jurisdiction and quash above mentioned order dated 03.10.2020 and any order (s) passed pursuant to it.

10.3. This Hon'ble Court may kindly be pleased to declare passing of order dated 3.10.2020 by the SDO, Durg and any act done in pursuance of the same to be illegal and without jurisdiction and quash above mentioned order dated 03.10.2020 and any order (s) passed pursuant to it.

10.4. This Hon'ble Court may kindly be pleased to declare the act of passing election schedule dated 08.10.2020 by the Inspector, firms and societies and any act done in pursuance of the same to be illegal and without jurisdiction and quash above mentioned order dated 03.10.2020 and any order (s) passed pursuant to it.

10.5. This Hon'ble Court may kindly be pleased to direct the respondent authorities not to interfere with functioning of the society except in accordance with law.

10.6. This Hon'ble Court may kindly be pleased to allow the officer bearers of petitioner Sangh elected vide election dated 04.10.2020 to function in accordance with the bye-laws.

10.7. This Hon'ble Court may be pleased to direct the respondent authorities to ensure private respondents act in accordance with law and the bye-laws of the society.

10.8. This Hon'ble Court may kindly be pleased to grant any other relief (s) / writ (s), order (s) in favour of the petitioner, which the Hon'ble Court deemed fit & just in the facts & circumstances of the case, including awarding of the costs to the petitioner.”

3. Main contention of petitioner/appellant in writ petition was that in pursuance of the letter dated 17.9.2020 and subsequent letter of the Sub-Divisional Officer, Durg dated 18.9.2020 as also order passed by the High Court in WPC No.2097/2020, elections have already been conducted on scheduled date i.e. 04.10.2020.
4. Respondent No.1 filed reply to writ petition resisting prayers made therein. It was pleaded that on the request of rival groups of the society, vide letters dated 17.9.2020 & 18.9.2020, the Naib Tahsildar-cum-Executive Magistrate was appointed for holding elections and the Assistant Registrar, Firms & Societies, Durg was granted permission for holding elections as per bye-laws on 4.10.2020. However, in order to ensure compliance of bye-laws of society i.e. service of 15 days advance notice, the Collector vide letter dated 3.10.2020 had extended the date of elections and appointed a neutral/impartial Election Officer for holding elections. In these circumstances, the petitioner-society is estopped from challenging the order of the Collector dated 3.10.2020 extending the date of elections and appointing neutral/impartial Election Officer. They have also challenged authority of Shri Rajesh Jain, President of petitioner-society on the ground that as per description mentioned at Page Nos.85 &

101, name of President is mentioned as 'Rajesh Lodha' and not 'Rajesh Jain'. No election proceeding took place on 4.10.2020 and the documents placed on record in this regard have been created subsequently. The Additional Collector, Durg vide letter dated 3.10.2020 by-passing his earlier letter dated 17.9.2020, extended the date of election from 4.10.2020 to 22nd & 23rd October, 2020. It was also pleaded that fact of election already taken place on 04.10.2020 has not been brought to the notice of any of the parties and on 17.10.2020 they have directly approached the High Court by filing writ petition stating so.

5. Learned Single Judge taking into consideration the pleadings made by both sides as also the documents placed on record, disposed of writ petition on 27.10.2020 in following terms;-

“10. Thus this Court does not find any good reason seeking for interference to the impugned order Annexure P-1 and Annexure P- 2 dated 03.10.2020 respectively. However, what is relevant at this juncture to take note of the fact that the proposed date of election as per Annexure P-1 and P-2 ie., 22 & 23.10.2020 having crossed and because of the interim order of this Court, the election could not be conducted and a fresh election has to be conducted in accordance-with by-laws.

11. Considering the fact that the petitioner is a society registered under the Firms and Societies and also taking note of the fact that in a General Body Meeting held on 21.02.2020, the dispute arose so far as the appointment of an Election Officer is concerned and also realising the fact that there appears to be more than one set of groups in the petitioner society. In the larger interest of justice and also in the interest of the society, it would be appropriate for free and fair election ordered to be conducted under the Registrar Firms and Societies, who is the controlling authority for all the firms and

societies registered under the Chhattisgarh Firms and Societies Act.

12. Accordingly, this Court directs the Registrar Firms and Societies to appoint a suitable Inspector under the Firms and Societies authorising him to act as an Election Officer for the petitioner- society and to call for a General Body Meeting in-accordance-with the bylaws of the society by giving a clear 15 days notice period and on the said date hold an election and elected body be intimated to the Registrar in-accordance-with law.”

6. Mr. Ishan Verma, learned counsel for appellant society submits that the learned Single Judge erred in not considering that the Collector and the Sub-Divisional Officer do not have any jurisdiction to appoint an Election Officer for holding elections of a private society, as such issuance of direction to the Assistant Registrar, Firms & Societies to hold elections of appellant society as per bye-laws is bad in law. Appellant society had approached the Collector and the Sub-Divisional Officer, Durg seeking for permission to hold elections of society during unprecedented pandemic 'Covid-19' and lock-down period, but the Collector exceeded his jurisdiction in passing the order dated 03.10.2020. Elections have already taken place on 04.10.2020 in accordance with the bye-laws and new office bearers have also been elected. As such, there was no occasion for the Collector, Durg and the Inspector, Firms & Societies, Raipur to hold elections of appellant society again on 22.10.2020 & 23.10.2020. Further, the meeting of General Body of appellant society on the subject of elections was already called on 21.2.2020 preceded by the notice as required under Rule 10(A) of the bye-laws,

therefore, the Additional Collector could not have cancelled the elections scheduled on 4.10.2020 on that ground. Appellant society has already appointed one Shri Mohan Lal Sethiya as Election Officer in its meeting dated 2.3.2020, hence the Additional Collector was not having any power to appoint Election Officer for holding elections in the society.

7. Mr. Prateek Sharma, learned counsel appearing on behalf of respondent No.8 submits that he has filed an application for dismissal of writ appeal on the ground that both the rival groups of appellant-society, without any protest or demur, had participated in the election process, which took place after passing of the order in writ petition; elected body and office bearers have already started functioning/working; outgoing President Kantilal Bothra & Rajesh Jain were elected as Executive Members of the society. As the impugned order has already been acted upon, appellant cannot be permitted to assail the same.
8. We have heard learned counsel for the parties and perused the record.
9. Indisputably, appellant is a registered society under the Adhiniyam of 1973. After completion of term of earlier elected body, appellant society decided to hold fresh elections, hence, on 12.3.2020 the election was notified to be held on 29.3.2020 and one Shri Mohan Lal Sethia has been appointed as Election Officer. However, due to imposition of lock-down in

the country on account of pandemic 'Covid-19', the elections could not be held on the date fixed. Requests made by the Election Officer to hold elections of appellant society, have been turned down by the Sub-Divisional Officer, Durg time and again. In the meantime, one of the groups of society appointed Ms. Neeta Jain as Election Officer. Appellant society vide letters dated 18.8.2020 (Annexure P-11) & 19.8.2020 (Annexure P-12) requested the Commissioner, the Superintendent of Police, Collector and the Nodal Officer for holding elections of the society under the supervision of an officer of the District Administration. When no heed was paid to the aforementioned request, appellant society approached the High Court by preferring WPC No.2097/2020. During the pendency of said writ petition, the Collector issued letter dated 17.9.2020 appointing Shri Jayendra Singh Baghel, Naib Tahsildar-cum- Executive Magistrate, Durg as Election Officer for holding elections. Relevant part of letter dated 17.9.2020 (Annexure P-3) is extracted below as under:-

“इस प्रकार दोनों पक्षों के द्वारा पृथक-पृथक चुनाव अधिकारी नियुक्त किये गये हैं, ऐसी स्थिति में चुनाव अधिकारी को लेकर विवाद की स्थिति निर्मित न हो इसलिए कानून व्यवस्था को दृष्टिगत रखते हुए निर्वाचन कराने हेतु श्री जयेंद्र सिंह बघेल नायब तहसीलदार एवं कार्यपालिक मजिस्ट्रेट दुर्ग को नियुक्त किया जाता है, उनकी उपस्थिति में दिनांक 04 अक्टूबर, 2020 को सहायक रजिस्ट्रार फर्म्स एवं संस्थाएं दुर्ग संभाग, दुर्ग जिला दुर्ग छ.ग. के बाँयलाज के तह चुनाव कराने की अनुमति दी जाती है।

10. Pursuant to the letter dated 17.9.2020, the Sub-Divisional Officer had issued letter to the Naib Tahsildar for completing election process in accordance with the bye-laws. Taking into

consideration the aforementioned letters and subsequent developments, writ petition was disposed of by learned Single Judge by observing as under:-

“3. Today, when the matter is taken up for hearing, the State counsel submitted that the Sub Divisional Officer, Durg has vide his order dated 18.09.2020 already ordered for conducting election as per by-laws on 04.10.2020. The said decision was on the basis of the order of the Collector, dated 17.09.2020.

4. In view of the fact that election of the petitioner society has already been declared to be held on 04.10.2020 in accordance with by-laws, this Court is of the opinion that no further grievance of the petitioner survives. The writ petition at this juncture stands disposed of expecting the authorities to act in accordance with orders passed by the Collector and the SDO dated 17.09.2020 and 18.09.2020 respectively.”

11. From the aforementioned letters of the Collector and the Sub-Divisional Officer, it is apparent that considering the dispute between two rival groups of appellant society and appointment of one Election Officer by each group, the Collector, with a view to resolve the dispute between them, had appointed the Naib Tashildar-cum-Executive Magistrate as Election Officer. This order of the Collector as well as order passed in writ petition are not put to challenge by the petitioner/appellant before any appropriate forum. Appellant had accepted the order of the Collector for holding elections by the Naib Tahsildar, a government official. Elections were scheduled on 4.10.2020 at 10 a.m. The Collector subsequently issued another order dated 03.10.2020 (Annexure P-1) mentioning therein that as the requirement under the bye-laws for issuance of 15 days advance notice has not been complied

with due to paucity of time, hence elections fixed on 4.10.2020 are extended to 22.10.2020 & 23.10.2020 and for that purpose, one Shri Pramod Kujur, Inspector, Firms & Societies, Raipur has been appointed as Election Officer. Copy of this letter was forwarded to Kantilal Bothra, Ex-President and Padam Barediya, Ex.-Mahamantri of appellant society. The Sub-Divisional Officer (R), Durg has written letter to the aforementioned ex-office bearers of appellant society with regard to the order dated 3.10.2020 superceding his earlier order dated 17.9.2020; postponement of elections of appellant society scheduled to be held on 4.10.2020; fixing the date of elections as 22.10.2020 & 23.10.2020; appointing Shri Pramod Kujur, Inspector, Firms & Societies, Raipur as Election Officer.

12. From perusal of the entire pleadings and documents available on record, it is clear that main dispute from August, 2020 arose in the society is with regard to the appointment of Election Officer by two rival groups of the society. There is no dispute with regard to elections or functioning of the society, the dispute is only with regard to holding of elections in accordance with the bye-laws of the society. The Collector vide Annexure P-1 has only appointed one neutral Election Officer, a government official, whose work was to conclude the election process in accordance with bye-laws of the society only. Appellant society has already accepted letters dated 17.9.2020 & 18.9.2020 of the Collector and the Sub-Divisional

Officer respectively, but on the date fixed earlier i.e. 4.10.2020, elections could not be held because of non-compliance of a particular clause of the bye-laws i.e. of giving clear 15 days notice of elections. The letter dated 3.10.2020 has been issued only to fulfil the said requirement, no other reason has been mentioned in the order Annexure P-1 of the Collector.

13. Though the submission of learned counsel for appellant is that as per orders passed by the Collector and the SDO on 17.9.2020 & 18.9.2020 respectively, the elections have already taken place, but from perusal of the letter dated 08.10.2020 (Annexure P-18) written by Shri Mohan Sethia claiming himself to be Election Officer, it is apparent that in Paragraph-33 it is mentioned that the government officials appointed by the Collector & the SDO were not present. Relevant part of Para-4 of the order dated 1.10.2020 passed in WPC No.2097/2020 based on the orders of the Collector and the SDO, reads as under:-

“4.....The writ petition at this juncture stands disposed of expecting the authorities to act in accordance with orders passed by the Collector and the SDO dated 17.09.2020 and 18.09.2020 respectively.”

14. If the appellant's say is that the elections have been conducted as per order of the Collector but in absence of the officer appointed by the Collector for holding elections, then the elections, if any held as stated, being in contravention of

the order of the Collector cannot be said to be valid and lawful elections.

15. Another aspect of the case is that after passing of the impugned order by the learned Single Judge, as intimated by Mr. Sharma, learned counsel for respondent No.8, the elections have already taken place on 17.12.2020 in which all the members of appellant society have participated, this fact is not disputed by the learned counsel for the appellant. Thus, the order passed by the learned Single Judge has already been acted upon, therefore, appellant society is now estopped to challenge the same as they cannot be permitted to blow hot and cold at the same breath.

16. Taking into consideration the entirety of the facts and circumstances of case, looking to the nature of dispute and further considering that all the members of appellant society had participated in election process which took place after passing of the order by the learned Single Judge, we do not find any good ground to interfere with the order impugned passed by the learned Single Judge.

17. In the result, the appeal fails and is accordingly dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-